

FORT BEND COUNTY COURTS AT LAW

POLICY REGARDING PRO SE APPLICANTS

Revised 10/1/2014



Court Policy Regarding “Pro Se” Applicants (Applicants without an Attorney)

People who represent themselves in court are called “pro se” or “self-represented” litigants. You are not required to have a lawyer to file papers or to participate in a case. You have a right to represent yourself. **However, a pro se may not represent others. Under Texas law, only a licensed attorney may represent the interests of third-party individuals or entities, including guardianship wards and probate estates.** See *In re: Guetersloh*, 326 S.W.3d 737 (Tex. App – Amarillo, 2010) and *Steele v. McDonald*, 202 S.W.3d 926 (Tex App. – Waco, 2006), and the authorities cited in those opinions. Therefore, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. The only time a pro se applicant may proceed in court is when truly representing **only** himself or herself. **Although the clerk may accept documents for filing, the court will take no action on the documents unless there is an attorney of record in the case.**

Frequently Asked Questions

Q: What is a pro se?

A: A pro se is an individual who has not hired a lawyer and appears in court to represent himself and no other person or entity.

Q: Can I still serve as an executor, administrator, or guardian even though I’m not a Lawyer?

A: Yes. One need not be a lawyer to serve as an executor, administrator, or guardian. **However, the executor, administrator, or guardian must be represented by counsel.**

Q: But I’m the only one that needs letters testamentary. As executor, how would I be representing the interests of others?

A: As executor of a decedent’s estate, you don’t represent only yourself. An executor represents the interests of beneficiaries and creditors. This responsibility to act for the benefit of another is known as a fiduciary relationship. It gives rise to certain legal obligations and responsibilities that require legal expertise. The attorney you hire represents you in your capacity as executor and assists you in representing those for whom you are responsible.

Q: If I get the paperwork from a law library or the Internet, can I fill it out and file it? Isn’t that what lawyers do?

A: Lawyers don’t just fill out forms. Lawyers (1) determine what method of probate or guardianship is appropriate in a particular situation, (2) create or adapt any necessary paperwork and – importantly - (3) advise the client about the ongoing responsibilities of a fiduciary. If you are not a lawyer, your creating legal pleadings while acting as a fiduciary would constitute the unauthorized practice of law.

Q: **As a pro se, what proceedings can I do on my own?**

A: In Probate Court or any other court, the only proceedings you can handle as a pro se are those in which you truly would be representing **only** yourself. For example, a pro se applicant may probate a will as a muniment of title when he or she is the sole beneficiary under the will, and there are no debts against the estate other than those secured by liens against real estate. Note, though, that probating a will as a muniment of title is not always a good option even if there are no debts and the applicant is the sole beneficiary. **Whether a muniment of title is the correct probate procedure for a particular situation is a legal decision best made by a lawyer.**

As another example, all of decedent's heirs may work together without a lawyer to file a small estate affidavit in the limited situations in which a small estate affidavit might be appropriate. For further information, see Texas Estates Code Chapter 205 and the Fort Bend County Courts at Law Small Estate Affidavit Checklist. As the checklist notes, the complexity of the Code poses many pitfalls for non-lawyers attempting to comply with the requirements for a small estate affidavit. An attorney's assistance in drafting a small estate affidavit may prevent the denial of an Affidavit where it would have been an appropriate probate procedure if the Affidavit has been prepared correctly.